

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Thomas Tri Quach, M.D.

Case No. 800-2016-021229

**Physician's and Surgeon's
Certificate No. G 80556**

Respondent


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 13, 2019.

IT IS SO ORDERED: February 11, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2016-021229

14 **THOMAS TRI QUACH, M.D.**
15 **9186 Bolsa Avenue**
Westminster, CA 92683

OAH No. 2018090104

16 **Physician's and Surgeon's Certificate No. G**
17 **80556,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields,
26 Deputy Attorney General.

27 2. Respondent Thomas Tri Quach, M.D. (Respondent) is represented in this proceeding
28 by attorneys Kenneth Julian, Esq., and Allen Huang, Esq., whose address is 695 Town Center

1 Drive, 14th Floor, Costa Mesa, CA, 92626, and Gary Wittenberg, Esq., whose address is 1901
2 Avenue of the Stars, Suite 1750, Los Angeles, CA 90067.

3 3. On or about January 18, 1995, the Board issued Physician's and Surgeon's Certificate
4 No. G 80556 to Respondent. The Physician's and Surgeon's Certificate No. G 80556 was in full
5 force and effect at all times relevant to the charges brought in Accusation No. 800-2016-021229,
6 and will expire on March 31, 2020, unless renewed.

7 **JURISDICTION**

8 4. On or about July 16, 2018, Accusation No. 800-2016-021229 was filed before the
9 Board, and is currently pending against Respondent. The Accusation and all other statutorily
10 required documents were properly served on Respondent on July 16, 2018. Respondent timely
11 filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No.
12 800-2016-021229 is attached hereto as Exhibit A and incorporated by reference as if fully set
13 forth herein.

14 **ADVISEMENT AND WAIVERS**

15 5. Respondent has carefully read, fully discussed with counsel, and fully understands the
16 charges and allegations in Accusation No. 800-2016-021229. Respondent has also carefully read,
17 fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and
18 Disciplinary Order.

19 6. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
21 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
22 to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
26 waives and gives up each and every right set forth above.

27 ///

28 ///

1. CULPABILITY

2 8. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in paragraphs 8
4 through 32, and paragraphs 41 through 42, in Accusation No. 800-2016-021229, and that he has
5 thereby subjected his Physician's and Surgeon's Certificate No. G 80556 to disciplinary action.

6 9. Respondent further agrees that if an accusation is ever filed against him before the
7 Medical Board of California, all of the charges and allegations contained in Accusation No. 800-
8 2016-021229 shall be deemed true, correct, and fully admitted by Respondent for purposes of any
9 such proceeding or any other licensing proceeding involving Respondent in the State of California or
10 elsewhere.

11 10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 80556 is
12 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
13 the Disciplinary Order below.

14 CONTINGENCY

15 11. By no later than the effective date of this Stipulated Settlement and Disciplinary
16 Order, Respondent further agrees to dismiss the following: *Thomas Tri Quach, M.D. v. Dean R.*
17 *Grafilo, Director, Department of Consumer Affairs, State of California*, (Court of Appeals,
18 Fourth District, Division Three, Case No. G056031) pending before the California Court of
19 Appeals, and *Thomas Tri Quach, M.D. v. Medical Board of California*, (Superior Court Case No.
20 30-2018-00968688-CU-WM-CJC) pending before the Superior Court of California, County of
21 Orange, Central Justice Center. Failure to dismiss the aforementioned Court of Appeals and
22 Superior Court matters will render the Stipulated Settlement and Disciplinary Order null and
23 void.

24 12. This stipulation shall be subject to approval by the Board. The parties agree that this
25 Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties
26 unless approved and adopted by the Board, except for this paragraph, which shall remain in full force
27 and effect. Respondent fully understands and agrees that in deciding whether or not to approve and
28 adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written

1 communications from its staff and/or the Attorney General's Office. Communications pursuant to
2 this paragraph shall not disqualify the Board, any member thereof, and/or any other person from
3 future participation in this or any other matter affecting or involving Respondent. In the event that the
4 Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order,
5 with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value
6 whatsoever, and shall not be relied up on or introduced in any disciplinary action by either party
7 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be
8 rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member
9 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
10 Settlement and Disciplinary Order or of any matter or matters related hereto.

11 ADDITIONAL PROVISIONS

12 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be
13 an integrated writing representing the complete, final and exclusive embodiment of the agreements of
14 the parties in the above-entitled matter.

15 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
16 including copies of the signatures of the parties, may be used in lieu of original documents and
17 signatures and, further, that such copies shall have the same force and effect as originals.

18 15. Respondent agrees that his Physician's and Surgeon's Certificate No. G 80556 is subject
19 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
20 Disciplinary Order below.

21 DISCIPLINARY ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 80556 issued
23 to Respondent THOMAS TRI QUACH, M.D. is hereby revoked. However, the revocation is
24 stayed and Respondent is placed on probation for three (3) years on the following terms and
25 conditions:

26 1. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
27 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
28 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.

1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations

1 from the assessment, education, and training, the program shall advise the Board or its designee
2 of its recommendation(s) for additional education, training, psychotherapy and other measures
3 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
4 program recommendations. At the completion of the program, Respondent shall submit to a final
5 evaluation. The program shall provide the results of the evaluation to the Board or its designee.
6 The professional boundaries program shall be at Respondent's expense and shall be in addition to
7 the Continuing Medical Education (CME) requirements for renewal of licensure. The program
8 has the authority to determine whether or not Respondent successfully completed the program.

9 A professional boundaries course taken after the acts that gave rise to the charges in the
10 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
11 or its designee, be accepted towards the fulfillment of this condition if the course would have
12 been approved by the Board or its designee had the course been taken after the effective date of
13 this Decision.

14 3. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third
15 party chaperone present while consulting, examining or treating patients. Respondent shall,
16 within 30 calendar days of the effective date of the Decision, submit to the Board or its designee
17 for prior approval name(s) of persons who will act as the third party chaperone.

18 If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of
19 the effective date of this Decision, Respondent shall receive a notification from the Board or its
20 designee to cease the practice of medicine within three (3) calendar days after being so notified.
21 Respondent shall cease the practice of medicine until a chaperone is approved to provide
22 monitoring responsibility.

23 Each third party chaperone shall sign (in ink or electronically) and date each patient
24 medical record at the time the chaperone's services are provided. Each third party chaperone
25 shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party
26 chaperone.

27 Respondent shall maintain a log of all patients seen for whom a third party chaperone is
28 required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical

1 record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger,
2 in chronological order, shall make the log available for immediate inspection and copying on the
3 premises at all times during business hours by the Board or its designee, and shall retain the log
4 for the entire term of probation.

5 Respondent is prohibited from terminating employment of a Board-approved third party
6 chaperone solely because that person provided information as required to the Board or its
7 designee.

8 If the third party chaperone resigns or is no longer available, Respondent shall, within five
9 (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for
10 prior approval, the name of the person(s) who will act as the third party chaperone. If Respondent
11 fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or
12 unavailability of the chaperone, Respondent shall receive a notification from the Board or its
13 designee to cease the practice of medicine within three (3) calendar days after being so notified.
14 Respondent shall cease the practice of medicine until a replacement chaperone is approved and
15 assumes monitoring responsibility.

16 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
17 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
18 Chief Executive Officer at every hospital where privileges or membership are extended to
19 Respondent, at any other facility where Respondent engages in the practice of medicine,
20 including all physician and locum tenens registries or other similar agencies, and to the Chief
21 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
22 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
23 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
24 insurance carrier.

25 5. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
26 governing the practice of medicine in California and remain in full compliance with any court
27 ordered criminal probation, payments, and other orders.

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1 6. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation.

4 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
5 the end of the preceding quarter.

6 7. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

8 Respondent shall comply with the Board's probation unit.

9 Address Changes

10 Respondent shall, at all times, keep the Board informed of Respondent's business and
11 residence addresses, email address (if available), and telephone number. Changes of such
12 addresses shall be immediately communicated in writing to the Board or its designee. Under no
13 circumstances shall a post office box serve as an address of record, except as allowed by Business
14 and Professions Code section 2021(b).

15 Place of Practice

16 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
17 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
18 facility.

19 License Renewal

20 Respondent shall maintain a current and renewed California physician's and surgeon's
21 license.

22 Travel or Residence Outside California

23 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
24 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
25 (30) calendar days.

26 In the event Respondent should leave the State of California to reside or to practice,
27 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the
28 dates of departure and return.

1 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
2 available in person upon request for interviews either at Respondent's place of business or at the
3 probation unit office, with or without prior notice throughout the term of probation.

4 9. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
5 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
6 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return
7 to practice. Non-practice is defined as any period of time Respondent is not practicing medicine
8 as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours
9 in a calendar month in direct patient care, clinical activity or teaching, or other activity as
10 approved by the Board. If Respondent resides in California and is considered to be in non-
11 practice, Respondent shall comply with all terms and conditions of probation. All time spent in
12 an intensive training program which has been approved by the Board or its designee shall not be
13 considered non-practice and does not relieve Respondent from complying with all the terms and
14 conditions of probation. Practicing medicine in another state of the United States or Federal
15 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
16 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
17 considered as a period of non-practice.

18 In the event Respondent's period of non-practice while on probation exceeds eighteen (18)
19 calendar months, Respondent shall successfully complete the Federation of State Medical Board's
20 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
21 program that meets the criteria of Condition No. 18 of the current version of the Board's "Manual
22 of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
23 medicine.

24 Respondent's period of non-practice while on probation shall not exceed two (2) years.

25 Periods of non-practice will not apply to the reduction of the probationary term.

26 Periods of non-practice for a Respondent residing outside of California will relieve
27 Respondent of the responsibility to comply with the probationary terms and conditions with the
28 exception of this condition and the following terms and conditions of probation: Obey All Laws;

1 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
2 Controlled Substances; and Biological Fluid Testing.

3 10. COMPLETION OF PROBATION. Respondent shall comply with all financial
4 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
5 completion of probation. Upon successful completion of probation, Respondent's certificate shall
6 be fully restored.

7 11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
8 of probation is a violation of probation. If Respondent violates probation in any respect, the
9 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
10 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
11 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
12 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
13 be extended until the matter is final.

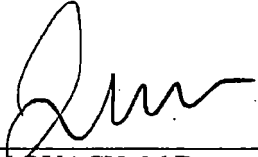
14 12. LICENSE SURRENDER. Following the effective date of this Decision, if
15 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
16 the terms and conditions of probation, Respondent may request to surrender his license. The
17 Board reserves the right to evaluate Respondent's request and to exercise its discretion in
18 determining whether or not to grant the request, or to take any other action deemed appropriate
19 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
20 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the
21 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
22 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical
23 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

24 13. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
25 with probation monitoring each and every year of probation, as designated by the Board, which
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
27 California and delivered to the Board or its designee no later than January 31 of each calendar
28 year.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorneys, Gary Wittenberg, Esq., Kenneth Julian, Esq., and Allen Huang,
4 Esq. I fully understand the stipulation and the effect it will have on my Physician's and
5 Surgeon's Certificate No. G 80556. I enter into this Stipulated Settlement and Disciplinary Order
6 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
7 Medical Board of California.

8
9 DATED: 10/7/2018


THOMAS TRI QUACH, M.D.
Respondent

11 I have read and fully discussed with Respondent Thomas Tri Quach, M.D. the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14 DATED: 10/8/2018


GARY WITTENBERG, ESQ., KENNETH JULIAN,
ESQ., and ALLEN HUANG, ESQ.
Attorneys for Respondent

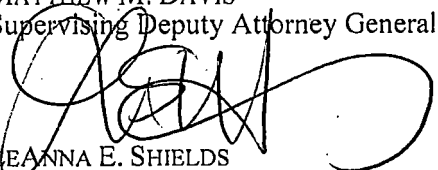
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Medical Board of California.

20 Dated: 10-8-18

Respectfully submitted,

21 XAVIER BÉCERRA
Attorney General of California
22 MATTHEW M. DAVIS
Supervising Deputy Attorney General

23 
24 LEANNA E. SHIELDS
25 Deputy Attorney General
26 Attorneys for Complainant

27 SD2018700654
28 71618770

Exhibit A

Accusation No. 800-2016-021229

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 16 2018
BY D. Richards ANALYST

1. XAVIER BECERRA
Attorney General of California
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Supervising Deputy Attorney General
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8. *Attorneys for Complainant*

10. BEFORE THE
11. MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12. STATE OF CALIFORNIA

13. In the Matter of the Accusation Against:

Case No. 800-2016-021229

14. THOMAS TRI QUACH, M.D.
15. 9186 Bolsa Avenue
Westminster, CA 92683

ACCUSATION

16. Physician's and Surgeon's Certificate
17. No. G 80556,

18. Respondent.

19.
20. Complainant alleges:

21. PARTIES

22. 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23. capacity as the Executive Director of the Medical Board of California, Department of Consumer
24. Affairs (Board).

25. 2. On or about January 18, 1995, the Medical Board issued Physician's and Surgeon's
26. Certificate No. G 80556 to Thomas Tri Quach, M.D. (Respondent). The Physician's and
27. Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28. herein and will expire on March 31, 2020, unless renewed.

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4. Section 2227 of the Code states:

“(1) Have his or her license revoked upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(5) Have any other action taken in relation to discipline as part of an order of suspension, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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1 5. Section 2234 of the Code states, in pertinent part:

2 "The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article, unprofessional
4 conduct includes, but is not limited to, the following:

5 "...

6 "(b) Gross negligence.

7 "...

8 "(h) The repeated failure by a certificate holder, in the absence of good cause, to
9 attend and participate in an interview by the board. This subdivision shall only apply
10 to a certificate holder who is the subject of an investigation by the board."

11 6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the
12 rules or ethical code of the medical profession, or conduct which is unbecoming to a member in
13 good standing of the medical profession, and which demonstrates an unfitness to practice
14 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

15 7. Section 726 of the Code states:

16 "(a) The commission of any act of sexual abuse, misconduct, or relations with a
17 patient, client, or customer constitutes unprofessional conduct and grounds for
18 disciplinary action for any person licensed under this or under any initiative act
19 referred to in this division.

20 "(b) This section shall not apply to consensual sexual contact between a
21 licensee and his or her spouse or person in an equivalent domestic relationship when
22 that licensee provides medical treatment, to his or her spouse or person in an
23 equivalent domestic relationship."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Sexual Misconduct)

3 8. Respondent Thomas Tri Quach, M.D. has subjected his Physician's and Surgeon's
4 Certificate No. G 80556 to disciplinary action under section 726, of the Code, in that he engaged
5 in sexual misconduct with Patient A¹, as more particularly alleged hereinafter:

6 9. On or about February 2008, Patient A began receiving medical care and treatment by
7 Respondent. Respondent provided prenatal care and delivered Patient A's third child.

8 10. Respondent then continued providing obstetrics and gynecology care and treatment
9 for Patient A, including routine visits and birth control.

10 11. In or around 2010, Respondent again provided prenatal care to Patient A and
11 delivered Patient A's fourth child.

12 12. Respondent then continued providing obstetrics and gynecology care and treatment
13 for Patient A, including routine visits and birth control.

14 13. On or about June 4, 2010, Respondent inserted a copper intrauterine contraceptive
15 device in Patient A.

16 14. On or about June 7, 2011, Patient A presented for a routine gynecology visit with
17 Respondent.

18 15. On or about February 2, 2012, Patient A presented with complaints of vaginal
19 discharge. Progress notes for this visit indicate Respondent was the treatment provider at the time
20 and indicated he diagnosed her with vaginitis, prescribed medications and indicated a follow up
21 visit in four months.

22 16. In or around February 2012, Respondent provided Patient A with his personal cell
23 phone number and told Patient A to contact him anytime. Over the next several months,
24 Respondent and Patient A exchanged text messages and also began using Facebook to contact
25 each other.

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27 _____
28 ¹ For patient privacy purposes, patient identity is withheld.

1 17. On or about March 17, 2012, Respondent suggested they switch away from Facebook,
2 and use a different application provider, WhatsApp, in order to keep their communications
3 discreet.

4 18. On or about March 20, 2012, Respondent and Patient A met in a vehicle where they
5 kissed and discussed when they could get together to engage in sexual intercourse.

6 19. On or about March 23, 2012, Respondent went to Patient A's home and met Patient A
7 on her boat where they engaged in sexual intercourse.

8 20. For the next several months, Respondent and Patient A continued to exchange
9 personal and intimate messages using various mediums, including WhatsApp, and met in various
10 locations, engaging in sexual intercourse.

11 21. On or about June 7, 2012, Patient A presented for a routine gynecology visit,
12 including a routine vaginal exam. Progress notes for this visit indicate Respondent was the
13 treatment provider at the time and indicated a follow up visit in one year.

14 22. Respondent and Patient A continued to exchange personal and intimate messages
15 using various mediums, including WhatsApp, and met in various locations, engaging in sexual
16 intercourse.

17 23. In or around November 2012, Respondent and Patient A began using another
18 application, WeChat, in order to use the video chat feature to correspond with one another.

19 24. On or about November 22, 2012, Respondent sent a message to Patient A, stating he
20 wanted to see her. Patient A invited Respondent to come over. Respondent went to Patient A's
21 home and waited for her in the spare room closet. Patient A's husband discovered Respondent in
22 the spare room closet and told him to leave.

23 25. On or about November 25, 2012, Respondent sent an email to Patient A's husband
24 apologizing for his behavior.

25 26. In or around January 2013, Respondent and Patient A resumed their exchange of
26 personal and intimate messages, using various mediums, including WhatsApp and WeChat,
27 resumed meeting in various locations and engaging in sexual intercourse.

28 ///

1 27. Over the next several months, Respondent and Patient A used several different
2 mediums to correspond discreetly, including WhatsApp, WeChat, Viber, Line Chat, Hidden Chat,
3 and DigitCalc.

4 28. Over the next several months, Respondent and Patient A continued to meet in various
5 locations to engage in sexual intercourse.

6 29. At no time did Respondent terminate the physician patient relationship with Patient
7 A.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Gross Negligence)**

10 30. Respondent Thomas Tri Quach, M.D. has further subjected his Physician's and
11 Surgeon's Certificate No. G 80556 to disciplinary action under sections 2227 and 2234, as
12 defined by 2234, subdivision (b), in that he committed gross negligence, as more particularly
13 alleged herein after:

14 31. Paragraphs 8 through 29, above, are hereby incorporated by reference and realleged as
15 if fully set forth herein; and

16 32. Respondent committed gross negligence by maintaining non-clinical
17 communications, contact, and engaged in sexual misconduct with Patient A, during and after the
18 time he saw Patient A as his patient.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Cooperate with a Medical Board Investigation)**

21 33. Respondent Thomas Tri Quach, M.D. has further subjected his Physician's and
22 Surgeon's Certificate No. G 80556 to disciplinary action under sections 2227 and 2234, as
23 defined by 2234, subdivision (h), in that he failed to comply with a Medical Board investigation,
24 as more particularly alleged herein after:

25 34. On or about May 16, 2017, Investigator A. Driscoll (Inv. Driscoll) with the Health
26 Quality Investigations Unit, Department of Consumer Affairs, on behalf of the Medical Board of
27 California, mailed a letter to Respondent at his address of record to schedule a subject interview
28 as part of the Board's investigation.

35. On or about June 28, 2017, Inv. Driscoll received correspondence from Respondent's attorney declining her request for a subject interview.

36. On or about July 19, 2017, Inv. Driscoll personally served an Investigational Subpoena to Appear on Respondent at his residence, requiring Respondent to appear at a subject interview on September 7, 2017.

37. On or about August 25, 2017, Inv. Driscoll received correspondence from Respondent's attorney indicating Respondent will not attend the subject interview scheduled for September 7, 2017.

38. On or about September 1, 2017, Inv. Driscoll was carbon copied on correspondence between the Office of the Attorney General and Respondent's attorney regarding Respondent's obligation to comply with the Investigational Subpoena to Appear.

39. On or about September 6, 2017, Inv. Driscoll received additional correspondence from Respondent's attorney indicating Respondent will not attend the subject interview scheduled for September 7, 2017.

40. On or about September 7, 2017, Respondent failed to appear at the scheduled subject interview.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

41. Respondent Thomas Tri Quach, M.D. has further subjected his Physician's and Surgeon's Certificate No. G 80556 to disciplinary action under sections 2227 and 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 40, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

42. To determine the degree of discipline, if any, to be imposed on Respondent Thomas Tri Quach, M.D., Complainant alleges that on or about March 25, 2010, in a prior disciplinary

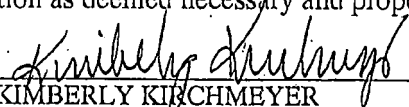
1. action entitled *In the Matter of the Accusation Against Thomas Tri Quach, M.D.* before the
2. Medical Board of California, in Case Number 04-2008-194271, Respondent's license was placed
3. on probation for dishonesty, knowingly making or signing false documents directly related to the
4. practice of medicine, alteration of medical records, failure to maintain adequate and accurate
5. medical records, and unprofessional conduct. On or about March 23, 2012, probation was
6. terminated. That decision is now final and is incorporated by reference as if fully set forth herein.

7. **PRAYER**

8. WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9. and that following the hearing, the Medical Board of California issue a decision:

10. 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 80556, issued to
11. Respondent Thomas Tri Quach, M.D.;
12. 2. Revoking, suspending or denying approval of Respondent Thomas Tri Quach, M.D.'s
13. authority to supervise physician assistants and advanced practice nurses;
14. 3. Ordering Respondent Thomas Tri Quach, M.D., if placed on probation, to pay the
15. Board the costs of probation monitoring; and
16. 4. Taking such other and further action as deemed necessary and proper.

17. DATED: July 16, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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